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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 57

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

WILLIAM I. CONNELLY AND BERTHA CONNELLY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The findings of fact and the opinion of the Tax Court (R. 31-40) are reported at 8 T.C. 848. The opinion of the Court of Appeals (R. 54-59) and the dissenting opinion of Judge Edgerton (R. 59) are reported at 172 F. 2d 877.

JURISDICTION

The judgment of the Court of Appeals was entered on January 24, 1949. (R. 60.) The petition for a writ of certiorari was filed April 21, 1949, and granted June 6, 1949. The jurisdiction of this Court rests upon 28 U.S.C. 1254.

QUESTION PRESENTED

Whether taxpayer, who while holding a civil service position with the Coast Guard became enrolled as a full-time temporary member of the Coast Guard Reserve and served without compensation other than that of his civilian position which he continued to hold throughout his enrollment, is entitled to exclude $1,500 from his taxable income for the years 1943 and 1944 under the provisions of Section 22 (b) (13) (A) of the Internal Revenue Code which grants such exclusion for compensation received for active service as a commissioned officer in the military or naval forces.

STATUTES AND REGULATIONS INVOLVED

The applicable provisions of the statutes and regulations involved are set forth in Appendix A, *infra*, pp. 41-46.

STATEMENT

The taxpayers are husband and wife. In 1943, William I. Connelly, who for convenience will hereafter be referred to as the taxpayer, was a civil service employee of the United States, serving in the Legal Division of the Coast Guard. On February 19, 1943, the taxpayer was enrolled as a temporary member of the Coast Guard Reserve and was ordered to full-time duty at Coast Guard Headquarters in Washington, D. C. By the terms of his enrollment, he was to receive no pay or allowances other than the compensation of his civilian position which he continued to hold, and his duties were to be performed in the classification known as

"Coast Guard Civil Service Employees." (R. 16, 19-20, 32-33, 34.)

At the time of his enrollment, taxpayer's civil service position was grade P-5 and he was enrolled in the Reserve with a rank of Lieutenant Commander. In April, 1944, his civil service position was reclassified to grade P-6, whereupon he was disenrolled from his rank of Lieutenant Commander and was re-enrolled with the rank of Commander, pursuant to the recommendation of the Chief Counsel of the Coast Guard whose recommendation was in accordance with the conditions set forth in the Coast Guard Commandant's Memorandum of March 10, 1944, pertaining to the promotion of members of the temporary Reserve at Coast Guard Headquarters, who were also civilian employees. (R. 33-34.)

During the period of his enrollment, the taxpayer continued to receive compensation for his service at the applicable civil service professional classification rates, which was paid from appropriations allocated for the payment of salaries of civil service positions. As in the case of other civilian employees, the taxpayer was subject to civil service regulations covering annual and sick leave, deductions for civil service retirement were taken from his pay, and he received overtime compensation for work performed in excess of forty hours per week. (R. 33.) In the case of injury in the line of duty, the taxpayer was entitled to the same benefits as civil service employees of the United States. In

the case of sickness contracted while performing duty, he was entitled to the same hospital and medical treatment afforded members of the regular Coast Guard, but not including dental care. (R. 35.) His temporary enrollment in the Coast Guard Reserve did not exempt him from training and service under the Selective Training and Service Act. By the terms of his enrollment, he was entitled to only such other benefits and privileges as "may be specifically authorized from time to time for temporary members of the Reserve or classifications thereof by law or regulations." (R. 35.) While on active duty, the taxpayer was vested with the same power and authority as members of the regular Coast Guard of similar rank, but the office memorandum of the Commandant of the Coast Guard outlining the extent of taxpayer's military authority stated that the Commandant "desires to make it crystal clear that there is a definite distinction between the military status and activities of a temporary member of the Reserve and the determination of the benefits—particularly with regard to pecuniary benefits—that derive to such temporary members in the Coast Guard Reserve." (R. 30.) Taxpayer was also subject to the laws, regulations and orders of the Coast Guard and to disciplinary action while so subject. (R. 29-31, 34.)

The taxpayer was disenrolled on September 15, 1945. The original disenrollment form issued by Coast Guard Headquarters stated the reason for

disenrollment was "For his own convenience", and that the type of service was "Coast Guard Civil Service Employee, without military pay." Taxpayer filed a written protest specifically objecting to this description of his "Record of Service", and the first form was then followed by another stating the reason for disenrollment as "completion of service because of satisfactory completion of assigned duties." The second disenrollment described the type of duty performed as "Chief of Admiralty and Maritime Section having civil service status, receiving civilian but no military pay, and holding rank of Commander as a Temporary Member of the Coast Guard Reserve." (R. 35-36.)

The taxpayer received total civilian pay of $5,872.04 for 1943 and $5,802.08 in 1944. In his tax return for each year, he claimed the annual exclusion of $1,500, provided under the Internal Revenue Code, Section 22 (b) (13) (A), which was disallowed by the Commissioner of Internal Revenue. (R. 36.) The Tax Court held that the taxpayer was not entitled to the exclusion (R. 36-40), but the Court of Appeals, Judge Edgerton dissenting (R. 54-59), reversed the decision of the Tax Court.

SPECIFICATION OF ERROR TO BE URGED

The Court of Appeals erred in holding that the taxpayer was entitled to the $1,500 exemption provided by Section 22 (b) (13) (A) of the Internal Revenue Code.

SUMMARY OF ARGUMENT

The circumstances of taxpayer's Coast Guard service require denial of the claimed Section 22(b)(13)(A) service-pay exemption,[1] and reversal of the Court of Appeals, on the authority of *Mitchell* v. *Cohen*, 333 U. S. 411. The Court of Appeals determined the statute's application in this case, as it had in *Cohen*, solely by reference to the taxpayer's "military status," and refused to go any further than to inquire whether taxpayer was a commissioned officer in the Coast Guard. But this Court's *Cohen* opinion has made it clear that in this field "dictionary definitions" must give place to the Congressional purpose and the statutory scheme. That case involved another of the special benefits afforded to members of the armed forces—the right to veterans' preference—as it applied to one of the classifications of temporary Coast Guard members enrolled under the same statute which authorized taxpayer's service. The Court, although agreeing that the temporary reservist might come within one of the literal meanings of the controlling word in that statute, "ex-servicemen", held that he was not entitled to preference because he never ceased to be a civilian and was therefore not within the purpose of the Veterans' Preference Act to assist servicemen

[1] Excluding up to $1500 "of compensation received * * * for active service as a commissioned officer * * * in the military or naval forces of the United States" during World War II. Appendix A, *infra*, pp. 44-45.

divorced from civilian status in finding employment on their return.

Similarly, here, even on the assumption that taxpayer's situation meets the literal language of the Internal Revenue Code, the clear objective inherent in the statute and confirmed by the legislative materials—to render financial assistance to those cut off from their civilian sources of income—precludes the granting of the exemption to the taxpayer who in the financial sense with which the Code provision is concerned never ceased to be a civilian. At the time of his enrollment as a temporary Lieutenant Commander in the Coast Guard Reserve, he was a civilian attorney of the Coast Guard in the civil service classification, P-5. Under the terms of his enrollment he was to serve without military pay or allowances but was to continue to receive his civil service salary and to retain all other aspects of his civil service status. This included, in addition to the salary of his grade—paid from appropriations earmarked for civilian salaries—overtime pay, deduction for civil service retirement, and annual and sick leave. He was, moreover, actually promoted from grade P-5 to P-6 during his military service and thereafter received the increased compensation of a P-6. He probably could resign for his "own convenience" and could not be transferred without his permission. It was understood that he was to continue to do essentially the same kind of work that he had performed prior to his enrollment. These facts

of his military service show that the economic fabric of his civilian life remained intact during that service and ineluctably direct the denial of the exemption intended to assist those full-fledged members of the armed forces whose economic position was generally disrupted by virtue of their service.

Actually, this case is a stronger one for the denial of the claimed benefit than was *Cohen* because here, in addition to the taxpayer's being plainly outside the Congressional objective, he also fails to meet the literal provisions of the statute, which exempt from taxation the first $1,500 of "compensation received * * * for active service as a commissioned officer." The fact is that none of his compensation was received for service as a Coast Guard officer; all of it was received for service as a Coast Guard civil service employee, which he continued to be. The provisions of Section 207 of the Coast Guard Auxiliary and Reserve Act of 1941, as amended, and its legislative history show that the purpose of giving military status to civil service employees was to solve the administrative impasse resulting from having civilians in a military chain of command. The problem was resolved by continuing them in their civilian positions while at the same time granting them military rank and authority, and not by making them full-fledged members of the armed forces. This was the same procedure which was applied to other classifications of temporary

reservists employed in private industry, who continued to do the work of the private employer for the regular compensation paid by that employer but at the same time were on full-time active duty as temporary members of the Coast Guard without military pay.

The conclusion of the Court of Appeals that because taxpayer performed full-time active duty as an officer of the Coast Guard, the civil service pay he received was necessarily compensation for duty as a commissioned officer is a confusion of thought caused by the circumstance that taxpayer's civilian employer was the United States and, therefore, also his military employer. It overlooks the incontestable fact that taxpayer continued as a civil service employee for which he received his compensation, just as other temporary members of the Coast Guard continued in private employment for which they received private compensation. Since taxpayer continued to occupy a civil service position and to perform the duties of that position, for which he was paid his civilian salary, while at the same time assuming the additional duties and some of the prerogatives of an officer for which he was not paid, it follows that he received no "compensation * * * for active service as a commissioned officer", and cannot avail himself of the exemption.

ARGUMENT

A Temporary Wartime Officer of the Coast Guard Reserve Enrolled in the Classification, "Coast Guard Civil Service Employees", Was Not Entitled to the $1,500 Exclusion Provided by Section 22(b)(13)(A) of the Internal Revenue Code for Compensation for Active Service in the Military or Naval Forces

This case is directly controlled by *Mitchell* v. *Cohen*, 333 U. S. 411. The taxpayer, like Cohen, was a temporary member of the Coast Guard Reserve with a unique military-civilian status, and he likewise seeks a special privilege intended to be granted only to those who were fully integrated into the armed forces. Just as the Congressional purpose in enacting the Veterans' Preference Act of 1944 denied Cohen any employment priority, so the purpose of Congress in enacting Section 22(b)(13)(A) of the Internal Revenue Code (Appendix A, *infra*, pp. 44-45), which provides an exclusion of up to $1,500 of the "compensation received * * * for active service as a commissioned officer," establishes that the taxpayer was not a member of the class intended to have the benefit of this exemption. And even if there were doubt as to the correctness of the decision in *Cohen*, no similar doubt can obtain here because, unlike the statute in *Cohen*, the literal words of the Internal Revenue Code provision clearly direct denial of the special benefit claimed by the taxpayer.

The Court of Appeals, whose views we discuss in some detail in part B, *infra*, thought that because taxpayer was a commissioned officer—as measured by the criteria of "oath of office, mili-

tary duty, and subjection to military discipline" —he necessarily satisfied the statute (R. 57-58). In doing so, it paid no heed to the admonishment it had received, in the reversal of its decision in *Cohen* (160 F. 2d 915), that the Congressional purpose is a relevant if not controlling consideration in the construction of statutes of this character. On the contrary, without any regard either to the legislative materials or the statutory structure, it simply refused to "ascertain an unexpressed intendment in the revenue act" (R. 58). Equally anomalous was its rejection of the clear statutory standard, which makes the nature of taxpayer's compensation controlling, in favor of its own characterization of the taxpayer's military "status," a standard for application of servicemen's and veterans' benefits which this Court had decisively repudiated in *Cohen*.

In developing our argument that the court below has ignored the controlling decision in this field and improperly granted a tax benefit where none is due, we will first discuss taxpayer's patently hybrid status, part military and part civilian, then discuss the impact of *Cohen* and the purpose of Congress in providing the exemption, and finally show the failure of taxpayer's case under the literal language of the Internal Revenue Code provision.

A. *Taxpayer's hybrid civilian-naval status.*

Like Cohen, the taxpayer was enrolled as a temporary member of the Coast Guard Reserve under

the authority of Section 207 of the Coast Guard Auxiliary and Reserve Act of 1941, as amended (Appendix A, *infra*, pp. 41-42), which authorized the enrollment of persons "(including Government employees without pay other than the compensation of their civilian positions)" who by reason of special training and experience were deemed qualified. The enrollment, according to the statute, was to be "under such conditions" as the Commandant should prescribe and under a definition of "powers and duties" by him. Enrollees were to have rank appropriate to their qualifications.

As the Court pointed out in the *Cohen* opinion (p. 413), there were six classifications of temporary members created under the authority of Section 207 of the Coast Guard Auxiliary and Reserve Act:[2] (1) Full-time active duty with military pay and allowances; (2) Volunteer Port Security Force; (3) Pilots without pay and allowances other than for uniforms, but paid by their own companies; (4) Officers of Great Lakes vessels without pay and allowances other than for uniforms, but paid by their own companies; (5) Coast Guard police without pay and allowances; and (6) Civil Service employees of the Coast Guard enrolled for full-time active duty without pay other than compensation for their civilian positions. Cohen was enrolled under the Volunteer Port classification; the tax-

[2] See Record p. 19 for the same classifications designated in somewhat different language.

payer, as a civil service employee of the Coast Guard. (R. 34.)

Other than the nominal differences inherent in their different classifications, the military status of Cohen and taxpayer appear to have been substantially identical. Just as the Court noted was true of *Cohen* (333 U.S. 411, 413-415), taxpayer took the oath of allegiance required of regular members of the Coast Guard (R. 22-23); he was enrolled "for the duration of the war upon the completion of which you will be disenrolled unless the period of your enrollment is sooner terminated by Coast Guard authority," (R. 34), although in actual practice those in taxpayer's status apparently could resign for their "own convenience",[3] and taxpayer apparently did in fact resign for his own convenience (R. 35).[4] Unlike any regular member of the armed forces, but just as in Cohen's case, taxpayer was not subject to transfer away from Washington nor could he be given a different type of duty than that for which he was enrolled. (Pars. 5, 9 and 10, Commandant's Circular No. 5-46, Appendix B, *infra*, pp. 50-51, 53-54; Personnel Bulletin No. 3-43, Appendix B, *infra*, pp. 63-65.) In fact, taxpayer continued to perform the identical duties he had performed prior to his enrollment. (R. 24.) Taxpayer was given a "Certificate of Disenrollment" upon severance as a temporary reservist, honorable discharges and mustering-out pay not being pro-

[3] Personnel Bulletin No. 75-45, Appendix B, *infra*, p. 62.
[4] This is not entirely clear (R. 35-36).

vided. (R. 35-36; pars. 9 and 12, Commandant's Circular No. 5-46, Appendix B, *infra*, pp. 53, 54.)

As in the case of members of the Volunteer Port Security Force,[5] taxpayer was required to register, and were it not for his age would have been liable, for training and service under the Selective Training and Service Act (R. 35); unlike the regular armed forces' members he could belong to other Reserve organizations and upon orders to active duty therein, the Coast Guard was required to "forthwith" release him from active duty. (Section 208, Coast Guard Auxiliary and Reserve Act of 1941, Appendix A, *infra*, pp. 42-43.)

Like Cohen, if the taxpayer were injured or killed in the line of duty, he was entitled only to the benefits prescribed by law for civilian employees of the United States, although if illness or disease occurred while on duty, he was entitled to the same hospital, but not dental, care as a regular member of the Coast Guard. (R. 35; Section 212 of the Coast Guard and Auxiliary Act of 1941, as amended, Appendix A, *infra*, pp. 43-44.)

Taxpayer, differing from members of the Volunteer Port Security Force, was on active duty at all times. (R. 34.) Like members of the Security Force, however, he was vested with the same power and authority as members of the regular Coast Guard of similar rank while on active duty, and was subject to the laws, regulations and orders for the

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[5] 333 U.S. 411, 415.

government of the Coast Guard, and to disciplinary action for offenses committed while subject to such law. (R. 34; Section 209, Coast Guard Auxiliary and Reserve Act of 1941, Appendix A, *infra*, p. 43.)

As a result of administrative determination by the various governmental agencies involved, and of the decision in *Mitchell* v. *Cohen*, 333 U.S. 411, temporary members of the Reserve (except those on full-time active duty *with* military pay and allowances) have been denied all of the important special benefits granted by Congress to veterans. Such benefits include the right to preference in federal employment (*Mitchell* v. *Cohen*,[6] *supra*), the right to National Service Life Insurance, the other benefits administered by the Veterans Administration such as pensions, medical and hospital services and burial benefits, and the broad benefits under the Servicemen's Readjustment Act of 1944. (Administrator's Decision, Veterans Administration, No. 699, Appendix B, *infra*, pp. 65-85.)

The duties which taxpayer performed were the same as his civilian duties as a Senior Attorney, Legal Division, Coast Guard Headquarters. He received no military pay and allowances, but con-

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[6] Although the Court had before it only the rights of members of the Volunteer Port Security Force to preference, the opinion plainly covers those in taxpayer's status since the Court defined (333 U.S. 411, 421) persons covered by the Veterans' Preference Act as "those who performed military service on full-time active duty with military pay and allowances, thereby dislocating the fabric of their normal economic and social life." Taxpayer received neither military pay and allowances nor was the fabric of his normal social and economic life disrupted. See *infra*, pp. 16, 26-27, 30-37, 39-40.

tinued to receive his civil service pay, grade P-5. Unlike the compensation of all regular members of the armed forces, taxpayer's pay continued to be paid from Congressional appropriations allocated to pay civilian salaries, deductions for civil service retirement were continued, and he received overtime pay in excess of forty hours per week. In addition, he was governed by civil service regulations for annual and sick leave. (R. 33.) As a matter of fact, "no phase" of taxpayer's civil service status was disturbed by his enrollment. (Personnel Bulletin No. 3-43, Appendix B, *infra*, p. 64.) And when his civil service classification was changed from P-5 to P-6, he was disenrolled as a Lieutenant Commander and enrolled as a Commander to rank retroactively from the date, March 16, 1944, on which his civil service position was reclassified. (R. 33.)

B. *Its legislative history and purpose show that the exemption was not designed to aid persons all of whose compensation remained civilian.*

We will show in part C, *infra*, that taxpayer received no compensation as a commissioned officer in the military or naval forces and hence fails to meet the literal requirements of Code Section 22(b)(13)(A). But even on the assumption that he can bring himself within the literal wording of the exemption, taxpayer is nevertheless not entitled to prevail because, just as the *Cohen* case held that temporary reservists were not the kind of "ex-serv-

icemen" to whom Congress intended to give federal job preference, so it is quite clear that taxpayer was not the type of commissioned officer whose compensation Congress desired to be afforded a preferential tax treatment.

1. The Court of Appeals for the District of Columbia Circuit decided both the *Cohen* case (160 F. 2d 915) and the instant one. The majority of the court, through Judge Prettyman who also wrote the *Cohen* opinion,[7] thought, as it had in *Cohen*, that the key to the problem was whether taxpayer had military "status" which it measured by "the long-established criteria—oath of office, military duty, and subjection to military discipline." (R. 58.) We do not here dispute, and it was not disputed in *Cohen*, that taxpayer had military status. The superficiality of the Court of Appeals' criteria of that status is apparent from part A, *supra*, where we have shown that taxpayer lacked many important prerogatives and benefits of a full-fledged officer while at the same time retaining most of the privileges of a civilian who is a civil service employee.

But this approach and these criteria were rejected in the plainest manner possible by this Court some ten months before this case was decided, when it reversed the Court of Appeals in *Mitchell* v. *Cohen*, 333 U. S. 411. The Court unmistakably

[7] Judge Edgerton dissented both in this case (R. 59) and in *Cohen*. He thought the correctness of the denial of the benefit here claimed was even "clearer" than that involved in *Cohen*.

held in *Cohen* that the question of "status" was beside the point, and that the Court of Appeals had misconceived the issue when, looking only to the difference between military and civilian status, it mechanically applied the literal words of the Veterans' Preference Act of 1944 to confer preferential rights on part-time temporary members of the Coast Guard Reserve. This Court held, on the contrary, that whether Cohen was an ex-serviceman within the statute's meaning must be determined "by an examination of the statutory scheme rather than by reliance upon dictionary definitions." (p. 418). An examination of the statute's purpose led the Court to conclude that Congress did not use the statutory term "ex-servicemen" in the broadest sense, but that the benefit of the statute was granted "only to those who performed military service on full-time active duty with military pay and allowances, thereby dislocating the fabric of their normal economic and social life." (p. 421).

Notwithstanding the clarity with which this Court disapproved the Court of Appeals' approach to the *Cohen* problem, the Commissioner's reliance below on that authority, and the Court of Appeals' own acknowledgment that the problem here was "somewhat similar" (R. 57), the court again held that whether taxpayer's status was civilian or military was dispositive of the issue and applied its *Cohen* criteria of military status, *i.e.*, "oath of office, military duty, and subjection to military discipline." (R. 58.)

The Court of Appeals' fleeting obeisance to this Court's *Cohen* decision consisted of (1) the assertion that the underlying principles of the earlier decision were to be limited to the Veterans' Preference Act, without any suggestion as to why those principles should not be applied to the interpretation of the coverage of analogous legislation to those in similar circumstances (R. 57), and (2) the statement that "But the Court [Supreme Court] did not reject or question the standards which we there [*Mitchell* v. *Cohen*] recited for the determination of status, as civilian or military, generally." (R. 57). Since this Court rejected the relevance of "status" entirely, it was obviously not germane to its opinion to consider the specific criteria for applying the rejected standard. The lower court's implication that since the criteria had not been questioned the standard itself had not, was plainly a *non sequitur*. The standard of military "status" had been explicitly cast aside.

2. It is apparent from the statutory structure that the purpose of Congress in enacting Section 22 (b) (13) (A) of the Internal Revenue Code was in a sense the converse of that which motivated the Veterans' Preference Act. The purpose of the latter enactment, as the Court stated in *Mitchell* v. *Cohen*, 333 U. S. 411, 418-421, was to aid those veterans who had been completely divorced from their civilian employment, by reason of their military service, in obtaining reemployment and rehabilitation when they changed back from military to civil-

ian life; the obvious purpose of the income tax exemption was to assist members of the armed forces in meeting the financial dislocation caused by their complete divorcement from civilian status.

a. That Congress desired the benefit to take the form of an addition to military pay, measured by the amount of the tax on the excluded pay, is plain from Section 22 (b) (13) itself. That subsection does not, as might have been done, grant an exemption or exclusion of any or all income of the members of the armed forces, but limits the exemption to compensation received for active duty as a commissioned officer, or in the case of enlisted men, to compensation received for active duty as a member below the grade of commissioned officer. No exemption was granted to a member of the armed forces *qua* member, but as the statute plainly states, to the compensation received for active duty as a member of the armed forces.

There was in this provision a deliberate choice of benefiting armed forces' members by the amount of the tax on a portion of their military compensation rather than by a flat exemption of a portion of their income regardless of source. In view of the wording of the provision, no contention could be made that a commissioned officer, for example, with interest, or dividend income, or a civilian salary could exclude any part of such income from liability for the tax. We think it self-evident that the purpose in enacting this provision was a Congres-

sional desire to "increase" military compensation by the amount of the tax, on the assumption that those uprooted from their civilian position and compensation were in need of this additional financial assistance.[5] By the same token, the failure to adopt a plan of exempting a certain amount of income, as such, of military personnel must have been based on the assumption that those receiving income other than that attributable to their military service did not need a special exemption for such income. Thus, as was true in the *Cohen* case, the taxpayer's military status is beside the statutory purpose, and the essential test is the real nature and source of the taxpayer's compensation and its relation to his civilian life. Here, respondent admittedly continued to receive his civilian pay and received no separate military compensation.

b. The purpose of Congress to limit the exclusion to military remuneration received for active duty, i.e., to "military" or "service" pay, and its reason for so doing—that it was presumed that the recipients of such pay were generally subjected to a financial hardship as a result of their change from civilian to military compensation—are confirmed

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[5] Congress made the same distinction in another provision. It treated differently "service pay" and "gross income in addition to compensation for active service as a member of the military or naval forces of the United States" in providing for deferment of the tax on "service pay." Section 3808, Internal Revenue Code, added to the Code by Section 142 (a) of the Revenue Act of 1945, c. 453, 59 Stat. 556 (26 U.S.C. 3808).

by the hearings, the Committee Reports, and the Congressional debates.[9]

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[9] Although Section 22 (b) (13) (A) of the Internal Revenue Code, as amended by Section 141 (a) of the Revenue Act of 1945, c. 453, 59 Stat. 556, governs here because it was made applicable by Section 141 (b) of the 1945 Act (Appendix A, *infra*, pp. 45-46) to all years beginning after December 31, 1942, the legislative materials relating to Section 22 (b) (13) (A), as it was added to the Code by Section 117 of the Revenue Act of 1942, c. 619, 56 Stat. 798, and as later amended by Section 7 (a) of the Current Tax Payment Act of 1943, c. 120, 57 Stat. 126, are equally relevant in determining the purpose of the provision applicable to this case, because the basic structure of Section 22 (b) (13) (A) has remained unchanged since it was added to the Code by the 1942 Revenue Act. The various changes, none of them relevant to the present controversy, related only to the amount of the exclusion and to varying treatment of commissioned officers and enlisted men, and of married and unmarried enlisted men.

Section 22 (b) (13) of the Internal Revenue Code, as originally enacted by Section 117 of the Revenue Act of 1942, provided as follows:

> (13) *Additional allowance for military and naval personnel.*—So much of the amount received, before the termination of the present war as proclaimed by the President, by personnel below the grade of commissioned officer in the military or naval forces of the United States as salary or compensation in any form from the United States for active service in such forces during such war, as does not exceed $250 in the case of a single person and $300 in the case of a married person or head of a family. The determination, for the purposes of this paragraph, of the taxpayer's status in the armed forces and his family status shall be made as of the end of the taxable year.

As amended by Section 7 (a), Current Tax Payment Act of 1943, the Code provision was that:

> (13) *Additional allowance for military and naval personnel.*—In the case of compensation received during any taxable year and before the termination of the present war as proclaimed by the President, by a member of the military or naval forces of the United States for active service in such forces during such war, or by a citizen or resident of the United States who is a member of the military or naval forces of any of the other United Nations for active service in such forces during such war, so much of such compensation as does not exceed $1,500

The House Report relating to the 1942 amendment [10] shows that the provision was designed to offset the lowering of individual exemptions provided by the 1942 Bill. H. Rep. No. 2333, 77th Cong., 2d Sess., p. 6 (1942-2 Cum. Bull. 372, 377). The Senate Report (S. Rep. No. 1631, 77th Cong., 2d Sess., p. 81 (1942-2 Cum. Bull. 504, 566)) stated that the provision was "intended to apply only to *salary* or compensation *received* by personnel [enlisted] *for active service* in the military or naval forces * * *." (Italics supplied.)

The House Report explaining the 1943 amendment, [11] uses the phrase "military pay" as synonymous with the compensation subject to the exemption (H. Rep. No. 401, 78th Cong., 1st Sess., p. 21 (1943 Cum. Bull. 1283, 1288)), and moreover makes it clear that the statute applied "only to salary or compensation received for active service * * *." H. Rep. No. 401, 78th Cong., 1st Sess., p. 41 (1943 Cum. Bull. 1283, 1313). See also S. Rep. No. 221, 78th Cong., 1st Sess., pp. 13-14, 47-48 (1943 Cum. Bull. 1314, 1324, 1349).

The Senate Hearings on the Current Tax Payment Act of 1943 leave no question that it was generally understood that the exclusion related only to "military" or "service" pay. The comprehensive statement of Randolph Paul, General Counsel of the Treasury Department, used the statutory language and the phrase "service pay" interchange-

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[10] Section 117, Revenue Act of 1942.

[11] Section 7 (a), Current Tax Payment Act of 1943.

ably, and later in the hearing when the Chairman of the Committee paraphrased the House bill provision as relating to income "from the Government," Mr. Paul corrected by saying, "Service pay." The chairman agreed with Mr. Paul, saying, "Yes; whether he is married or single," whereupon Mr. Surrey, the legislative counsel of the Treasury, stated, "That is correct." Senate Hearings before the Committee on Finance, 78th Cong., 1st Sess., on Current Tax Payment Act of 1943, pp. 7, 41.

The Congressional understanding, with respect to the 1942 and 1943 amendments, that the phrase in Section 22 (b) (13), "Compensation received * * * for active service * * * in the military or naval forces * * *", means "service" or "military" pay is equally clear as to the 1945 amendment. S. Rep. No. 655, 79th Cong., 1st Sess., pp. 34-35 (1945 Cum. Bull. 621, 648); H. Conference Rep. No. 1165, 79th Cong., 1st Sess., p. 8 (1945 Cum. Bull. 654, 656).

This precise and repeated reference by the legislators to the enactment as one excluding only military pay precludes any contention that taxpayer was of the class intended to be benefited. As we point out more fully in part C, *infra*, pp. 30-37; 39-40, there can be no question that he received no military or service pay, and that his compensation stemmed solely from his civilian position with the Coast Guard. He served with civilian pay only. It follows from the clear Congressional understanding

of the coverage of the exclusion that he is not entitled to the exemption.

In addition to making it perfectly plain that taxpayer's pay was not the type intended by Congress to be covered, the legislative materials also indicate the reason for the Congressional purpose of limiting the exclusion to service pay.

During the debate on the Current Tax Payment Act of 1943, Congressman Van Zandt,[12] speaking in opposition to an amendment which would have limited the exemption to members of the armed forces serving outside the United States, explained the purpose of the provision that was adopted as follows (89 Cong. Rec. 2742, 2754-2755):

> It is realized that *these exemptions* [the existing exemptions of $250 for single persons and $300 for married persons in the armed forces] *are not sufficient to assist a member of the military forces to enable him to meet the problem of taxation arising from his transition from a civilian to a military status.*
>
> * * * * *
>
> The proposed $3,500 exemption * * * is limited to income derived entirely from his service as a member of the military or naval

[12] Although he was not a member of the Ways and Means Committee, the Congressman's views are entitled to more than ordinary weight by virtue of his membership on the Committees of Merchant Marine and Fisheries and World War Veterans' Legislation. Congressional Directory, 78th Cong., 1st Sess., p. 228. The relevance of the jurisdiction of the latter Committee to this question is self-evident; the importance of the former is that it had jurisdiction over legislation relating to the Coast Guard and the Coast Guard Auxiliary and Reserve Act originated there.

> forces. If the serviceman has an *income in addition to his military or naval pay it is subject to income tax* on the same basis as if he were a civilian. (Italics supplied.)

The defeat of the proposed amendment and the debate concerning it indicate that the purpose of the exclusion was not to grant a gratuity for hazardous duty as would have been the case had the amendment been approved, or even a gratuity for military service, as such, but to recognize the financial hardship generally inherent in being cut off from civilian income. Most persons who entered the armed services made some financial sacrifice, and the exemption was designed to afford a measure of relief against the general disparity in the levels of civilian and military compensation.

The facts of taxpayer's temporary service in the Coast Guard clearly show that neither the Congressional purpose to exclude "military" pay nor its reason for the exclusion—the presumption that a financial hardship was involved in most cases in the substitution of military pay for civilian pay—is served by granting the exclusion to the taxpayer. It is undisputed that his pay was civilian, not military (R. 33-35) and continued to be the same amount that he received as a civilian even down to the last penny. Moreover, he was not subject to the additional financial hardships which were almost the inevitable concomitant of military duty caused by transfer away from home and inability to pursue more gainful pursuits at will, since in-

like all other officers he could not be transferred and it may be that he could resign merely because he had better financial opportunities elsewhere.[13]

In short, as far as financial considerations are concerned, taxpayer's status was not only like that of a civilian, it was in fact civilian. Since the exclusion related by its terms and purpose only to pay which was military in source and amount, it follows that taxpayer should be denied the exclusion.

C. *Taxpayer received no compensation "for active service as a commissioned officer"; his compensation came solely from his civilian position with the Coast Guard which he continued to hold.*

We have pointed out in part B of the Argument, *supra*, the considerations which support our belief that the case for denial of the exemption parallels that of, and is as strong as, *Mitchell* v. *Cohen*, 333 U. S. 411. Actually, however, as we stated at the outset, the Commissioner's position here is correct even if there were doubt as to the correctness of *Cohen*. There, as we have previously noted, the right to veterans' preference depended on whether the claimant was an ex-serviceman. The Court acknowledged that Cohen came within the literal

[13] One of the reasons for which temporary Coast Guard officers could resign, as was noted in part A, *supra*, was "own convenience," and "Change in Business Conditions" was one of the conditions of "own convenience" expressly recognized by the Coast Guard. Personnel Bulletin 75-45, Appendix B, *infra*, p. 62.

meaning of that term in at least one of its senses ["Ex-servicemen are indeed those who have performed military service" (333 U. S. 411, 418)], but held that, despite "dictionary definitions," the statutory scheme precluded Cohen from preference. Similarly, we have shown that the scheme of the exemption provision also requires a denial of its benefit to the taxpayer. Unlike the Veterans' Preferance Act, however, the plain language of the Internal Revenue Code establishes that taxpayer has no proper claim to its exclusion benefits.

1. The critical language of Section 22 (b) (13) (A) ["compensation received * * * for active service as a commissioned officer * * *,"] we think plainly means the amount paid to the taxpayer for service as an officer.[14] The preposition "as," according to its definition, means: "In a manner like that of: * * * In the idea, character, condition, or capacity of; limiting the consideration to certain attributes or relations; as, virtue considered as virtue; to appear as Hamlet * * *." Webster's New International Dictionary (1948). Thus, the literal meaning of the statute would be that one claiming the exclusion must receive military pay, and this, we noted in part B, *supra*, was the phrase repeatedly used in the Committee reports as synonymous with the statutory provision. Taxpayer received nothing for active duty "in a

[14] We here assume favorably to the taxpayer that he was a commissioned officer, although the Tax Court (R. 37-39) and Judge Edgerton (R. 59) both thought that he was not.

manner like that of", "or capacity of" a commissioned officer. On the contrary, he served without military pay and allowances, receiving only his salary as a civil service employee. (R. 33-36.) His certificate of enrollment expressly stated that he was to have no military pay or allowances other than the compensation of his civilian position (R. 16, 20, 34). His certificate of disenrollment as a Commander described his pay status first as "Coast Guard Civil Service Employee, without military pay" (R. 35), and upon his objection to the form of that disenrollment, the second described the circumstances of his pay as "having civil service status, receiving civilian but no military pay, and holding rank of Commander as a Temporary Member of the Coast Guard Reserve." (R. 36.) And the Coast Guard Auxiliary and Reserve Act of 1941, as amended (Appendix A, *infra*, pp. 41, 42), under which taxpayer was enrolled, expressly confirms the fact that he served with civilian pay only. See *infra*, pp. 30 *et seq.*

2. Assuming the critical point, the Court of Appeals held that the compensation taxpayer received was necessarily received "for active service as a commissioned officer." The court's reasoning was this (R. 58):

> To reach the conclusion that petitioner's compensation was not for service in the naval forces, we would have to hold that he worked full time for no compensation while, at the

same time, he received full compensation for no work.

This conclusion is fallacious because it assumes —contrary to the record, contrary to the Coast Guard Auxiliary and Reserve Act, and contrary to its history and administrative interpretation— that taxpayer did not continue to occupy and perform the duties of his civil service position for which he continued to be paid his civilian salary, while at the same time exercising military rank and authority for which he was paid nothing.[15]

Section 207 of the Coast Guard Auxiliary and Reserve Act expressly provides for the enrolling of "persons (including Government employees without pay other than the compensation of their civilian positions)" who, because of their special training and experience, are deemed qualified for duty. The parenthetical phrase added to Section 207 by the Act of November 23, 1942, c. 639, 56 Stat. 1020, Section 2, was explained by the House Report of the Committee on the Merchant Marine and Fisheries (H. Rep. No. 2525, 77th Cong., 2d Sess., p. 3) as being "advisable to

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[15] In addition to the different sources and purposes of civil service and military compensation, there are other important differences, including the following: The amount paid a Lieutenant Commander is different from that paid a P-5; even under the Court of Appeals' decision, there are different tax consequences (R. 54-55); military pay increases with longevity in a manner entirely different from classified civil service pay; the latter is subject to overtime compensation, whereas military pay is not; and civil service pay is reduced by retirement deductions but military pay is not.

clarify this authority [enrollment of temporary members with or without pay] and resolve any doubt of its applicability to Government employees by specifically providing for temporary membership in the Coast Guard Reserve of Government employees without military pay *but with continuance in their civilian positions and the receipt of the compensation thereof.*" (Italics supplied.) The Report further stated (p. 3) that it was believed that under present authority Government employees could be enrolled as temporary members without pay "on a same basis as persons of other civilian status. * * *." This authority, the Report said (pp. 2-3), emanated from the Act of June 6, 1942, c. 385, 56 Stat. 329, Section 1 (4), which had amended Section 207 of the Coast Guard Auxiliary and Reserve Act of 1941, to authorize the enrollment of qualified men as temporary members of the Reserve for full-time, intermittent or part-time duty without pay. "Under this authority men in all walks of life have been enrolled in the Coast Guard Reserve and perform special duty with military authority and responsibility *in addition to carrying on their regular vocations.*" (Italics supplied.) An example given by the Report was that of the enrollment of licensed officers in the Merchant Marine in the Great Lakes area for vessel and port security purposes. These men, the Report stated, serve without pay, as have fishermen and others for antisubmarine patrol, guards at shipyards

and war industry plants, and men of various professions and skills for beach patrol and duty at Coast Guard shore establishments. "*These temporary members* of the Reserve *continue in the pay of their employers.*" (Italics supplied.) (p. 3).

The Report gave as the reason for clarifying the authority of the Commandant to enroll government employees as temporary members of the Coast Guard, the elimination of "one of the most difficult problems now confronting the Coast Guard," and the "proper and equitable solution of the problem concerning the place in the service organizational scheme of civilians who are performing practically the same duties as military personnel * * *." (p. 3.) The Report continued (p. 3) that an example of the administrative problem posed by this situation was the status of Merchant Marine inspectors "who are under the supervision of Coast Guard officers and in turn have military personnel under their direction," and who perform duties in connection with the Merchant Marine which, during time of war, are of military character. The Report pointed out (p. 3) that it would not be practical to commission all such members in the regular Reserve for various reasons "not the least of which is that it would be not only difficult to adjust their ranks or ratings and service pay with their civilian positions and compensation, but it would be impossible for many of them to meet the physical

and age requirements for induction into the regular Reserve." The Report concluded (p. 3):

> This amendment is proposed and recommended by your committee since it would solve this administrative problem by resolving any possible doubt of the authority of the Coast Guard to enroll certain Government employees as temporary members of the Reserve for active Coast Guard duty without the pay of their military rank or rating, and would obviate any possible impairment of the right of such employees to continue to receive the compensation of their civilian positions for the entire period of their performance of active Coast Guard duty as such temporary members. *There will be little, if any, change in the nature of their duties after enrollment.* [Italics supplied.]

In view of this clear explanation of legislative purpose, it seems plain that the Court of Appeals' conclusion that the compensation which the taxpayer received was for his services as a commissioned officer is a confusion of thought born of the coincidence that taxpayer's civilian employer happened to be the United States Government. The overwhelming majority of the persons enrolled as temporary members of the Coast Guard Reserve were, at the time of their enrollment and throughout their service in the Coast Guard, employees of private employers who continued to perform their civilian duties. Thus, all of those persons enrolled under classifications 3, 4, and 5, of temporary members (set out *supra*, p. 12)

had private employers and were paid by them during the entire tenure of their full-time Coast Guard service. As the Committee Report explains by way of example, it was desirable to enroll Merchant Marine officers in the Great Lakes area as temporary members of the Coast Guard for vessel and port security purposes. Plant guards who were the employees of private war-material manufacturers, and pilots whose duty was to guide ships of the Merchant Marine and even of the Navy and Coast Guard into ports, were obviously also enrolled for security reasons. The duties of these plant guards, pilots, and Merchant Marine officers continued to be the same after enrollment as before, and this was also true in the case of the taxpayer and all other enrolled civil service employees of the Coast Guard. The sole purpose of the enrollment of Coast Guard civil service employees was to give them military rank and authority to remove administrative difficulties. This could be and was accomplished by continuing them in their civilian positions with military rank and authority.

There is nothing in the statute, in the Committee Reports, or in the record of the taxpayer's military service to indicate that he did not continue to be at the same time a civil service employee of the Coast Guard. Indeed, the record shows that during his tenure as a Lieutenant Commander in the Coast Guard, he was promoted in his civil service position from a P-5 to a P-6.

(R. 33.) It was only after the civilian promotion that the military authorities decided to give the taxpayer a military promotion, which, as the record states, was done in accordance with the Commandant's Memorandum of March 10, 1944. (R. 33.) That memorandum (Appendix B, *infra*, pp. 57-58), which is the Commandant's administrative interpretation of the Act,[16] clearly recognized that those in taxpayer's classification continued to be civil service employees of the Coast Guard who had also been given military status. The memorandum set forth the policy of giving military promotions to those temporary members who received an increase in grade and pay in their civilian positions. The military promotion was to be recommended if it was felt that it was necessary "to enable the *employee* to perform his duties better." (Italics supplied.) The memorandum made it clear that no military rank would be given which carried higher pay than the employee's civil service pay nor was the temporary member "*who is also a civilian employee*" (italics supplied) to have higher rank than an organizational superior. This administrative explanation, fully authorized by the statute, is a clear recognition of the con-

[16] It is worthy of note that Section 207 of the Coast Guard Auxiliary and Reserve Act gave broad authority to the Commandant "to enroll as temporary members of the Reserve, for duty *under such conditions as he may prescribe* * * * *to define their powers and duties*, and to confer upon them, appropriate to their qualifications and experience, the same ranks, * * * as are provided for the personnel of the regular Coast Guard Reserve." (Italics supplied.)

tinuance of taxpayer's civilian status."[17] He is referred to throughout the memorandum as "also a civilian employee," a designation totally at variance with the Court of Appeals' assumption that he was no longer a civilian but only a member of the military whose rate of pay happened to be measured by his former civilian position.

It could not seriously be contended that those temporary members of the Coast Guard in classifications 3, 4 and 5, (*supra*, p. 12) who continued to perform their civilian duties and were paid by private employers were receiving their civilian compensation "for active service as a commissioned officer." Yet their status parallels in every respect those in taxpayer's classification, and we think it worthy of repetition that it is only the coincidence that the taxpayer's civilian and military employer was the same person, the United States, that the Court of Appeals' views have even a superficial validity. In fact, it is as illogical to contend that taxpayer's civilian pay compensated him for his extra military responsibility as it would be to contend that those in the Volunteer Port Security

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[17] Both the taxpayer's first disenrollment as a Temporary Commander in the Coast Guard to which he objected, and the second one, as well, referred to him as a civil service employee during the time of his enrollment as a temporary member of the Coast Guard. The first disenrollment described his service as "Coast Guard Civil Service Employee, without military pay," and the second one described his duty as "Chief of Admiralty and Maritime Section having civil service status, receiving civilian but no military pay, and holding the rank of Commander as a Temporary Member of the Coast Guard Reserve." (R. 35-36.)

Force, such as Cohen, who performed part-time military duties not related to their civilian work, were also being compensated for their additional military duties by a portion of their civilian pay.

3. The Court of Appeals' emphasis (R. 55) on the contents of the Commandant's office Memorandum No. 13-43 (R. 29-31) does not support its views. The Court of Appeals quotes paragraphs two and six. Paragraph two of the memorandum states that a temporary member of the Reserve has the "same power, authority, rights and privileges as members of the regular Coast Guard of similar rank * * * in the execution of the duty assigned to him." (R. 56). That statement is, of course, consistent with the legislative purpose, related above, to resolve the administrative problem posed by lack of military authority in those holding civilian positions of importance, and is consistent with our position that taxpayer continued to perform civilian duties for which alone he was compensated. It does not suggest, as the Court of Appeals implied, that there were no real distinctions between a temporary and regular member of the Coast Guard Reserve. If any ambiguity existed as a result of paragraph two, it was negatived by paragraph three which the Court of Appeals did not quote. That paragraph stated (R. 30):

> 3. The Commandant desires to make it crystal clear that there is a definite distinction between the military status and activities of a temporary member of the Reserve and the de-

> termination of the benefits—particularly with regard to pecuniary benefits—that derive to such temporary members in the Coast Guard Reserve. This question of benefits, particularly financial benefits, of temporary members of the Reserve is not involved in this memorandum whatsoever, and nothing in this memorandum shall be so construed.

Paragraph six, quoted by the Court of Appeals, confirms the Congressional purpose, already noted, of enrolling civil service employees as temporary members of the Reserve, to obtain a homogeneous organization on a military basis and to eliminate differences in procedure and practices applicable to military personnel and civil service personnel engaged in exactly the same duty. Moreover, paragraph seven concluded the Commandant's memorandum by stating: "It is desired to reiterate that nothing contained in this memorandum has any bearing on the benefits accruing to a temporary member of the Reserve by reason of the military status acquired * * *." (R. 31).[18]

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[18] It should be noted that it was repeatedly made clear to the taxpayer that he had only limited military benefits. Thus, his certificate of enrollment as commander, after stating the nature of his injury and sick benefits, stated that he had "only * * * (c) Such other benefits and privileges as may be specifically authorized from time to time for temporary members of the Reserve or classifications thereof by law or regulations." (R. 20-21.) This and the other official notices of his limited benefits already referred to should be contrasted with taxpayer's testimony (R. 24):

> Q. Immediately after enrollment, what was your understanding as to the nature of your status because of the enrollment? A. Because of the representations that had

4. Our view that the taxpayer continued to hold civil service employment, for which he was paid, while at the same time holding military rank and authority, is confirmed by the incidents of his Government service during this period. We have already referred to the fact that he received a civilian promotion while exercising military authority. *Supra*, pp. 3, 34-35). He also continued to receive the same annual and sick leave that was given civil service employees, and he collected overtime pay for work in excess of forty hours per week. *Supra*, pp. 15-16, 29). In addition, the other conditions of taxpayer's military service (*supra*, pp. 13-16) have a significant bearing, especially his apparent right to resign "for his own convenience"—a right which he would have as a civil servant but normally not as a regular member of the military—and the lack of authority in his superiors to transfer him away from his home without his permission. All of these considerations, contrasted with the various restrictions imposed upon and the benefits afforded to full-fledged members of the armed forces, overwhelmingly show the taxpayer's true situation as that of a civil service employee who for the administrative

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been made, in writing or orally, I saw no reason for drawing a conclusion that there was any difference between my status as an officer in the Coast Guard Reserve and any other person who had graduated from the Coast Guard Academy or who had been brought into the Coast Guard Reserve during the war emergency. In other words, I thought that I was an officer of the Coast Guard Reserve without qualifications—without any restrictions or limitations.

convenience of the Government had military rank and authority. There can then be no question that his civil service pay was not for active duty as a commissioned officer.

5. Finally, if there were any doubt remaining that taxpayer did not receive compensation "as a commissioned officer," indeed if the contentions on each side were nicely balanced, the decision should be against the exemption, for the doctrine is firmly entrenched, as stated in *Trotter* v. *Tennessee*, 290 U. S. 354, 356, and reaffirmed in *United States* v. *Stewart*, 311 U. S. 60, 71, that "Exemptions from taxation are not to be enlarged by implication if doubts are nicely balanced." See also *Pacific Co.* v. *Johnson*, 285 U. S. 480, 491; *Bank of Commerce* v. *Tennessee*, 161 U. S. 134, 136; *U. S. Trust Co.* v. *Helvering*, 307 U. S. 57, 60.

CONCLUSION

The decision of the Court of Appeals is erroneous and should be reversed.

Respectfully submitted,

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SEPTEMBER 1949

APPENDIX A

1. Coast Guard Auxiliary and Reserve Act of 1941, c. 8, 55 Stat. 9:

> Sec. 206 [as amended by the Act of July 11, 1941, c. 290, 55 Stat. 584, Section 10; by the Act of June 6, 1942, c. 385, 56 Stat. 329, Section 1 (3); and by the Act of November 23, 1942, c. 639, 56 Stat. 1020, Section 2 (4)]. Commissioned officers, chief warrant officers, warrant officers, and enlisted personnel of the Reserve when engaged on active duty, on active duty while undergoing training, on training duty with pay, or when engaged in authorized travel to or from such duty, shall receive the same pay and allowances as are received by commissioned officers, chief warrant officers, warrant officers, and enlisted personnel of the Naval Reserve of the same rank, grade, rating, and length of service; pay and allowances of cadets of the Reserve shall under the same conditions, for the same purposes, and in the same manner, be assimilated to the pay and allowance of midshipmen of the Naval Reserve. * * *
>
> (14 U. S. C. 306.)
>
> Sec. 207 [as amended by the Act of June 6, 1942, *supra*, Section 1 (4); the Act of October 26, 1942, c. 628, 56 Stat. 990, and the Act of November 23, 1942, *supra*, Section 2]. The Commandant, with the approval of the Secretary of the Treasury or of the Secretary of the Navy, while the Coast Guard is operating as a part of the Navy, is hereby authorized to enroll as temporary members of the Reserve,

for duty under such conditions as he may prescribe, including but not limited to part-time and intermittent active duty with or without pay, and without regard to age, members of the Auxiliary, such officers and members of the crew of any motor-boat or yacht placed at the disposal of the Coast Guard, and such persons (including Government employees without pay other than the compensation of their civilian positions) who by reason of their special training and experience are deemed by the Commandant to be qualified for such duty, as are citizens of the United States, or of its Territories or possessions, including the Philippine Islands, to define their powers and duties, and to confer upon them, appropriate to their qualifications and experience, the same ranks, grades, and ratings as are provided for the personnel of the regular Coast Guard Reserve. When performing active duty with pay, as herein authorized, temporary members of the Reserve shall be entitled to receive the pay and allowances of their respective ranks, grades, or ratings, as may be authorized for members of the regular Coast Guard Reserve. (14 U. S. C. 307.)

Sec. 208. Members of the Reserve, other than temporary members as provided for in section 207 hereof, shall receive the same exemption from registration and liability for training and service as members of the Naval Reserve, and no member of the Reserve, other than temporary members thereof, shall be a member of any other naval or military or-

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ganization except the Auxiliary or the Coast Guard as provided for in sections 214 and 215 of this title: *Provided*, That temporary members of the Reserve who may be members of any other military reserve, if ordered to active duty therein, shall be forthwith released from all active duty with the Coast Guard, and their status as temporary members of the Reserve terminated.

(14 U. S. C. 308.)

Sec. 209. All members of the Reserve when employed on active duty, or when employed in authorized travel to or from such duty, or while wearing a uniform prescribed for the Reserve, shall be subject to the laws, regulations, and orders for the government of the Coast Guard: *Provided*, That disciplinary action for an offense committed while subject to the laws, regulations, and orders for the government of the Coast Guard shall not be barred by reason of release from duty status of any person charged with the commission thereof: *Provided further*, That for the purpose of carrying the provisions of this section into effect, members of the Reserve may be retained on or returned to a duty status without their consent, but not for a longer period of time than may be required for disciplinary action.

(14 U. S. C. 309.)

* * * * *

Sec. 212 [as amended by the Act of November 23, 1942, *supra*]. When any temporary

member of the Reserve is physically injured in line of duty while performing active Coast Guard service, or dies as a result of such physical injury, such member or such member's beneficiary shall be entitled to all the benefits prescribed by law for civil employees of the United States, and the United States Employees' Compensation Commission shall have jurisdiction in such cases and shall perform the same duties with reference thereto as in the case of civil employees of the United States. Temporary members of the Reserve who contract sickness or disease while performing active duty shall be entitled to the same hospital treatment as is afforded members of the regular Coast Guard.

(14 U. S. C. 312.)

2. Internal Revenue Code:

SEC. 22. GROSS INCOME:

* * * * *

(b) *Exclusions from Gross Income.*—The following items shall not be included in gross income and shall be exempt from taxation under this chapter:

* * * * *

(13) [As added by Section 117 of the Revenue Act of 1942, c. 619, 56 Stat. 798, as amended by Section 7 (a) of the Current Tax Payment Act of 1943, c. 120, 57 Stat. 126, and as further amended by Section 141 (a) of the Revenue Act of 1945, c. 453, 59

Stat. 556]. *Additional allowance for military and naval personnel.*—

(A) In the case of compensation received during any taxable year and before the termination of the present war as proclaimed by the President, for active service as a commissioned officer (or a commissioned warrant officer) in the military or naval forces of the United States during such war, or, in the case of a citizen or resident of the United States, as a member of the military or naval forces of any of the other United Nations during such war, so much of such compensation as does not exceed $1,500.

(B) Compensation received during any taxable year and before the termination of the present war as proclaimed by the President, for active service as a member below the grade of commissioned officer (or commissioned warrant officer) in the military or naval forces of the United States during such war.

(26 U.S.C. 22.)

3 Revenue Act of 1945, c. 453, 59 Stat. 556:

SEC. 141. ADDITIONAL ALLOWANCE FOR MILITARY AND NAVAL PERSONNEL.

* * * * *

(b) *Taxable Years to Which Applicable.*—Subparagraph (A) of section 22(b)(13), as amended by subsection (a) of this section, shall be applicable with respect to taxable years be-

ginning after December 31, 1942; subparagraph (B) thereof shall be applicable with respect to taxable years beginning after December 31, 1940.

* * * * *

4. Treasury Regulations 111, promulgated under the Internal Revenue Code:

Sec. 29.22(b)(13)-1 [as amended by T.D. 5508, 1946-1 Cum. Bull. 27]. *Compensation of Members of Military and Naval Forces.*—

* * * * *

(b) * * *

The exclusions under section 22 (b) (13) and this section are applicable only to compensation received prior to the termination of the present war to be fixed by proclamation of the President. * * * For the purposes of this section the military and naval forces of the United States include (but are not necessarily limited to) the Army, the Navy, the Marine Corps, the Coast Guard, the Army Nurse Corps, Female, the Navy Nurse Corps, Female, the Women's Army Auxiliary Corps or the Women's Army Corps, the Women's Reserve branch of the Naval Reserve, the Marine Corps Women's Reserve, and the Coast Guard Reserve, including the Coast Guard Women's Reserve.

* * * * *

APPENDIX B

UNITED STATES COAST GUARD

Washington 25, D. C.

22 January 1946

COMMANDANT'S CIRCULAR NO. 5-46

Subj: Benefits and Privileges Accorded Temporary Members of the Reserve

1. This statement is intended to review the status of temporary members of the Reserve in terms of the benefits and privileges accorded them. This will serve as the official basis for the Coast Guard's disposal of questions which may arise in connection with temporary membership in the Reserve.

Purpose for which this Class of Reserve was Established

2. Public Law 8-77th Congress, approved 19 February, 1941, which authorized the establishment of this class of personnel provided:

> SEC. 207. The Commandant, with the approval of the Secretary of the Treasury, is hereby authorized to enroll for active duty, as temporary members of the Reserve, such owners, regular officers, and members of the crew of any motorboat or yacht placed at the disposal of the Coast Guard as are citizens of the United States or of its Territories or possessions, except the Philippine Islands, define their powers and duties, and confer upon them, appropriate to their qualifications and experience, the same ranks, grades, and ratings as are provided for the personnel of the regu-

lar Coast Guard Reserve. . . . Provided, that temporary membership in the Reserve and the other benefits conferred by this section as a result thereof shall extend only for such period as the motorboat or yacht to which such members are attached is utilized in the service of the Coast Guard.

Public Law 599—77th Congess, approved 6 June, 1942, extended eligibility for enrollment to all members of the Auxiliary—whether or not boat owners—and to " . . . such men who by reason of their special training and experience are deemed by the commandant to be qualified . . . "

3. Amendment No. 4 to the Coast Guard Reserve Regulations dated 23 June, 1942, stated: "The primary purpose of creating this class of reservist is to enable the Coast Guard to utilize on special assignments of a wide variety the part-time services of especially well qualified men." Essentially, therefore, the intent of the legislation creating temporary membership in the Reserve was to provide a subsidiary pool of trained boatmen and their craft which would be available to supplement the regular Reserve in sudden emergencies of a local nature. The original purpose was later broadened so as to include the utilization of other specialists who might be unable to accept membership in the regular Coast Guard Reserve but whose temporary assistance on a part-time basis might be invaluable in their local areas. [See Senate Report No. 1317 of 7 May, 1942.]

4. Specifically, the types of duty for which temporary members of the Reserve were enrolled fall into the following general classifications:

a. For part-time or intermittent duty without military pay and allowances other than for uniforms. [Duty in this classification was usually for a period of twelve hours per week.]

b. As pilots without military pay and allowances other than for uniforms.

c. As officers of Great Lakes vessels without military pay and allowances other than for uniforms.

d. As Coast Guard police without military pay and allowances.

e. As Civil Service employees of the Coast Guard without pay other than compensation of their civilian positions.

In addition to these classifications for a brief period, a limited number of temporary members of the Reserve were enrolled with military pay and allowances for active full-time duty at shore stations or on Coast Guard vessels. For the most part those enrolled under this category were utilized on anti-submarine patrol during the early stages of the war. It was soon recognized that this type of service overlapped that of the regular Reserve, and this classification was eliminated as soon as possible largely by transfer of the members to the regular Reserve.

Distinguishing Characteristics of Temporary Membership in the Reserve

5. Service of temporary members of the Reserve, since the creation of this class, has been distinguished from that of the regular Reserve by limitations upon the duty or the place in which the duty may be performed. The original act provided: ". . . That temporary membership in the Reserve and the other benefits conferred by this section as a result thereof shall extend only for such period as the motorboat or yacht to which such members are attached is utilized in the service of the Coast Guard." Regulations for the U. S. Coast Guard Reserve issued in April 1941, pursuant to Public Law 8—77th Congress, provided in article 4301:

> Temporary reservists are appointed on the basis of their relationship to a privately owned vessel placed at the disposal of the Coast Guard by the owner thereof, and their temporary status is dependent upon their connection with such a vessel. Accordingly, such personnel shall not be transferred even temporarily from the vessel which forms the basis of their temporary appointment or enlistment.

When temporary membership in the Reserve was broadened by Public Law 599—77th Congress, this article was replaced by Article 2208 [later renumbered article 2207] which provides as follows:

> Notwithstanding any other provision of these Regulations, temporary reservists who are enrolled for special assignment duty on a part-time or intermittent active duty basis will

> not be subject to transfer without their consent from the vessel or place of their performance of active duty, and their orders shall so state.

The following provision was inserted as part of article 2207 also at this time:

> . . . The powers and duties of these reservists [temporary reservists] and the *tenure, conditions* and *place* of their active duty will be set forth in their orders . . . [italics supplied].

6. In recognition of the limitations on the service to which temporary members of the Reserve were liable, the basic legislation provided that temporary members of the Reserve should not be exempt by reason of such enrollment from registration and liability for training and service under the Selective Service and Training Act. Sec. 208 of Public Law 8—77th Congress, provided in article

> . . . That temporary members of the Reserve who may be members of any other military reserve, if ordered to active duty therein, shall forthwith be released from all active duty with the Coast Guard, and their status as temporary members of the Reserve terminated.

Benefits and Privileges Accorded Temporary Members of the Reserve

7. Regular reservists on active duty occupy the same military status as members of the permanent Coast Guard establishment. They are, therefore, subject to any type of duty in any geographical area and are constantly subject to regular military

discipline. Consequently, they have privileges similar to those accorded by law to members of the regular service. The service of temporary members of the Reserve, however, is restricted as to type, locality, time, and extent of military discipline. It is, therefore, appropriate that their privileges should be limited accordingly.

8. Regular reservists who suffer disability or death in line of duty are by law entitled to the same benefits as regular members of the Coast Guard, whereas the Coast Guard Reserve Act specifies that when any temporary member of the Reserve is physically injured in line of duty or dies as a result of such physical injury, he or his beneficiary shall be entitled to the benefits prescribed by law for civil employees of the U. S. Temporary members of the Reserve who are physically injured or contract sickness or disease while performing active duty shall be entitled to the same hospital treatment afforded regular members of the Coast Guard. Although the law relating to life insurance is not specific in its application to temporary members of the Reserve, the Administrator of Veteran's Affairs has held that the benefits of that act are not available to them. The administrator in issuing the ruling stated, in part:

> "Service in the land and naval forces as referred to in the National Service Life Insurance Act means continuous service in such forces by persons ordered to active duty for a period of not less than thirty days, and fairly construed would appear to exclude the members of any group whose status is or may be intermittently that of a civilian."

9. Temporary members of the Reserve enrolled under any of the classifications except that involving full-time duty with military pay were able to perform their duties while continuing with their regular civilian occupations and hence without impairment of their employment status. The Secretary of the Navy recognized the special character of the service rendered by those enrolled for such full-time duty, which was performed under arduous and frequently hazardous conditions. He, therefore, has ruled that they should be considered as naval veterans. In the light of this ruling the Civil Service Commission has ruled that the performance of ". . . active full-time duty with pay and allowances . . ." shall be the basis for granting veteran preferences. [Departmental Circular No. 508 dated November 4, 1944] Similarly eligibility to receive mustering out payments has been determined on this same basis, i.e., only those temporary members of the Reserve performing full-time active duty with naval pay and allowances are declared eligible. [Navy Department Mustering-Out Payments Regulations, Approved 6 January, 1945.]

10. These specific rulings are, in the opinion of the Coast Guard, entirely fair and reasonable with respect to the interests of the full-time members of the several military forces, and of the various classes of temporary members of the Reserve themselves. The Coast Guard is fully aware that many temporary members of the Reserve have performed important, valuable, and sometimes hazardous duties. With the exception of the special group described above, however, the temporary members of the Reserve have served part-time while living

at home and continuing their ordinary occupations, have not been subject to military control except when actually on duty and have been able to resign from the service at any time upon request. To make all classes of temporary members of the Reserve eligible for the various benefits established for veterans would therefore be clearly inconsistent with the intent and purposes of such benefits. These benefits, for the most part, have been designed to ease the readjustment of the veteran-to-civilian life and to assist him in regaining the economic position which he has lost because of his military service.

11. The Coast Guard has recognized the distinction outlined above in the establishment of eligibility for the honorable service lapel button. The public has gradually come to recognize this button as reflecting those sacrifices incidental to full-time active service in this war. Therefore, it has been ruled that only those temporary members of the Reserve who have served full time with military pay are eligible for this button. [Personnel Bulletin No. 128-43]

Miscellaneous Questions Raised by Temporary Members of the Reserve:

12. A number of other specific questions regarding the status of temporary members of the Reserve have been raised from time to time. With respect to some of these questions, the Coast Guard is not the determining agency.

Certificate of Disenrollment vs. Honorable Discharge:

The Coast Guard has adopted the policy of issuing Disenrollment Certificates rather than

Honorable Discharge Certificates to temporary members of the Reserve in order to clearly differentiate the types of service rendered by the holders of each certificate. Even more so than the honorable service lapel button, the discharge certificate has a clearly defined meaning not only to personnel within the services but to the public as well. Such a certificate represents the completion of a term of full time active service. The character of the discharge constitutes a certification of a specific standard of conduct and proficiency attained while subject to the military discipline which full time service in the military forces entails.

Further, the general public immediately identifies as a veteran the holder of a certificate of discharge from war service. Since it is not the policy of the Coast Guard or the Navy Department to consider as veterans temporary members of the Reserve other than those enrolled for full time duty with military pay, a distinctive type of separation certificate has been adopted. The teminology used in the Reserve Act itself has been followed in the selection of the term "disenrollment." That Act authorized the Commandant to "enroll" temporary members of the Reserve. The legal significance of either certificate is the same—honorable separation from the Reserve.

Coast Guard Honorable Discharge Button:

The Coast Guard Honorable Discharge button is not issued to temporary members of the Reserve inasmuch as this button is issued only to holders of Honorable Discharge Certificates [Form 2510].

Credit of Service of Temporary Members of the Reserve for Longevity Purposes:

In accordance with the Comptroller General's decision (B-33903), 4 September, 1943, only periods during which duty is performed can be counted for longevity pay purposes. Non-duty status of temporary members of Reserve is not deemed the equivalent of inactive service status of regular Coast Guard reservists. Therefore, periods when no duty was assigned or performed may not be counted [Finance and Supply Circular 217-43.]

Income Tax Deductions:

The Commissioner of Internal Revenue on 23 February, 1944, held that temporary members of the Coast Guard Reserve not paid by the Coast Guard for their military service are not entitled to the $1500 exclusion allowed members of the armed forces for Federal income-tax purposes. The exclusion from gross income does apply to military pay received by temporary members of the Reserve. [Finance and Supply Circulars 264-43 and 34-44]

Membership in American Legion, Sojourners, Etc.

Certain private veterans' organizations have ruled temporary members of the Reserve ineligible for membership in their organizations. Such matters are entirely for the decision of such organizations and the Coast Guard does not wish to influence such decisions in any way. When called upon to do so the Coast Guard will supply all pertinent facts regarding the status of temporary membership of the Reserve and the policy of the Coast Guard as outlined in this statement.

Credit toward Discharge Points

Active duty as a temporary member of the Coast Guard Reserve on a full-time with military pay basis is included in computing total service for which credit is given to determine discharge points. [Alcoast 63-45]

Campaign and Service Ribbons

Temporary members of the Reserve have been declared eligible for the World War II Victory Medal and for the American Campaign Medal provided that in the case of the latter they have 365 days of service. [Alcoast 148-45]

(S.) J. F. FARLEY,
Admiral, U. S. Coast Guard.

CG Dist List
A,B,C,D,E

UNITED STATES COAST GUARD
Washington, D. C.

Address Reply to
THE COMMANDANT (PCP)
Refer to File: CG-023
10 March, 1944

MEMORANDUM FOR CHIEFS OF OFFICES AND DIVISIONS AT HQ

Subj: Promotion of members of the Temporary Reserve at Hq who are also civilian employees

1. A number of the technical, professional, and subprofessional employees at Headquarters have been enrolled as Temporary Members of the Coast Guard Reserve in order to give them military

status. The rank or rating of these employees was assigned on the basis of the job to be performed. In order that there may be uniformity and a correlation between the ranks of the Temporary Members of the Reserve and the officers in Class (S) and (G) of the Reserve, the following policy will govern promotion:

(a) If an employee who is also a member of the Temporary Reserve is given an increase in grade and salary in his civilian position, the Division Chief may recommend a promotion in his military rank or rating if it is felt that this promotion is necessary in order to enable the employee to perform his duties better.

(b) In no case, however, should the Division Chief recommend a rank or rating which would carry with it a higher rate of pay in class (S) and (G) of the Reserve than the employee's Civil Service pay, nor should the Division Chief recommend a rank or rating which would give the member of the Temporary Reserve who is also a civilian employee, a higher rank or rating than any organizational superior who is in the Regular Coast Guard or Class (S) or (G) of the Reserve.

R. R. WAESCHE,
Commandant.

UNITED STATES COAST GUARD
Washington 25, D. C.

20 April 1948

PERSONNEL CIRCULAR No. 16-48

Subj: Honorable Service Lapel Button, issuance of; Honorable Discharge Emblem, discontinuance of

Refs: (a) Personnel Bulletin 128-43 (Corrected)
(b) Personnel Bulletin 9-45
(c) Personnel Circular 14-47

1. Reference (a) outlined the procedure for the issuance of the Honorable Service Lapel Button for officers and enlisted personnel separated from active service under honorable conditions and is hereby cancelled.

2. The Honorable Service Lapel Button heretofore has been issued coincident with the discharge or separation from active duty and for this reason a mistaken impression now exists that the lapel button is a discharge emblem denoting separation from the Service. Actually, the lapel button is emblematic of honorable service during World War II. In recognition of this fact, the Honorable Service Lapel Button shall be worn in lieu of a lapel button for the World War II Victory Medal and/or the American Defense Service Medal subject to the condition set forth in par. 3, hereof.

3. Except as applied to all Temporary Members of the Coast Guard Reserve who are ineligible by the provisions of the Armed Forces Personnel Board Statement of Policy dated 30 January 1948, the following eligibility requirements relative to

the Honorable Service Lapel Button and the issuance thereof are established:

(a) Personnel who honorably served on active duty for any continuous period between 9 September 1939, and 31 December 1946, both dates inclusive, are entitled to receive the Honorable Service Lapel Button.

(b) Personnel now serving on active duty who have been issued the World War II Victory Medal and/or the American Defense Service Medal according to reference (c) are automatically eligible to receive the Honorable Service Lapel Button and it shall be so issued to these personnel.

(c) Personnel now serving on active duty who have not been issued the World War II Victory Medal and/or the American Defense Service Medal but who are eligible to receive either or both of these medals in accordance with reference (c) are also entitled to receive the Honorable Service Lapel Button which shall be issued coincident with the World War II Victory Medal and/or the American Defense Service Medal in accordance with the provisions of this Circular.

(d) Since 31 December 1946, (the date the President proclaimed the termination of hostilities) is herein established as the cut-off date with respect to eligibility for the Honorable Service Lapel Button, personnel who initially entered on full time active duty with military pay and allowances on or after January 1, 1947 are not entitled to receive the lapel button.

(e) With respect to those few personnel eligible to receive the lapel button in accordance with this Circular who may have been separated without

having received the button, issuance is authorized by cognizant district commanders upon request through presentation by the individual, either in person or by mail, of documentary evidence indicating honorable service on active duty for any continuous period between 9 September 1939 and 31 December 1946.

(f) Upon delivery of the Honorable Service Lapel Button to personnel now serving on active duty: in the case of officers, a signed receipt, Form CG-2927, annotated to reflect the receipt of the button, will be forwarded to Headquarters; in the case of enlisted men, an entry will be made in the appropriate article of the Service Record of the recipient over his signature.

* * * * *

By direction of the Commandant.

(S.) R. T. McElligott,
Chief, Office of Personnel.

UNITED STATES COAST GUARD

Washington 25, D. C.

8 August, 1945

PERSONNEL BULLETIN No. 75-45

Subj: Temporary members of the Coast Guard Reserve; policy and instructions respecting disenrollments.

1. Personnel Bulletins No. 22-44, dated 9 February, 1944, and No. 109-44, dated 10 August, 1944, and the Commandant's Directive to all DCGO's of 3 November, 1943, regarding the disenrollment

of temporary members of the Reserve, are hereby superseded and canceled.

Disenrollment

* * * * *

6. DCGO's may disenroll a Temporary Reserve Officer, except Pilots, (see paragraph 7, below), upon their own authority only for the following reasons:

(a) Upon completion of service, or if the services of the officer are no longer required.

(b) For the officer's own convenience.

(c) For physical or mental disability upon certificate of a medical officer of the Public Health Service or Navy recommending same, provided the physical or mental disability is not due to own misconduct.

7. Disenrollments of Temporary Reserve Officers for any reason other than those specified above shall be effected only upon authority of the Commandant. Disenrollments, for any reasons, of Pilots who have been enrolled as temporary members of the Reserve may be effected only upon authorization by the Commandant.

* * * * *

12. The inclosed "Temporary Reserve Disenrollment Table" [19] showing the different types of dis-

[19] The portion of that table here relevant lists as "Conditions Affecting Disenrollment" for "Own Convenience" the following:

1. Change in Business Conditions.
2. Due to physical condition or health.
3. Change of Residence.
4. Did not accept unassigned status.
5. Entered Armed Forces.

enrollments authorized for Temporary Reservists, and the conditions affecting such disenrollment, is for your convenience in preparing disenrollment Form NAVCG-2742 and service record cards, and to standardize the terminology used for the reasons of disenrollment, throughout the districts.

* * * * *

By direction of the Commandant

(S.) J. F. FARLEY,
Chief Personnel Officer.

Incl.
Temporary Reserve Disenrollment Table.

UNITED STATES COAST GUARD

Washington

Headquarters 11 January, 1943.

PERSONNEL BULLETIN No. 3-43

Subject: Civilian Personnel; enrollment of as temporary members of the U. S. Coast Guard Reserve.

1. Headquarters has had under study for several months the subject of bringing into the military establishment of the Coast Guard civilian personnel holding key positions where such procedure would be to the advantage of the Coast Guard in furthering the war effort. To this end the following policy has been formulated, subject to such change from time to time as may be found desirable:

2. Merchant Marine Inspectors will be offered enrollment as temporary members in the U. S.

Coast Guard Reserve in ranks that, with but few exceptions, are in accordance with the recommendations of a board which was convened at Coast Guard Headquarters for the purpose of determining such ranks. Other technical and semi-technical civilian personnel will be offered enrollment as temporary members in the Coast Guard Reserve in accordance with the recommendations of a second board which was convened at Coast Guard Headquarters for the purpose of determining their appropriate ranks or ratings.

3. The enrollees will be placed on full-time active duty without pay. Because they are on active duty, they will wear the uniform of their rank or rating and will be entitled to a uniform allowance of not to exceed $250. They will continue to receive their Civil Service pay, and no phase of their Civil Service status will be disturbed by their enrollment.

4. If it becomes desirable to order any of this group to duty either at sea or beyond the continental limits of the United States, or to special duty where it is clearly to the advantage of the Government to enroll them in the (Regular) U. S. Coast Guard Reserve, if they consent and if they are found physically and otherwise qualified, they will be commissioned in the (Regular) Coast Guard Reserve. Such commissions will be issued generally in the rank in which the officer served as a temporary member of the Reserve.

5. Offers of enrollment will be made as soon as possible by separate letter to each person concerned. If the offer of enrollment is accepted, the employee will present himself before the District

Coast Guard Officer of his particular district or at Coast Guard Headquarters, whereupon he will be enrolled as a temporary member in the Coast Guard Reserve in the rank or rating offered. If the offer of enrollment is declined, the man will remain in his Civil Service capacity without prejudice.

6. Merchant Marine Inspectors, and others of this group, holding Merchant Marine licenses or otherwise qualified for sea duty on salt water, and desiring sea duty, should make application for such duty to Headquarters through official channels.

(S.) ROBERT DONOHUE.

ADMINISTRATOR'S DECISION, VETERANS ADMINISTRATION, NO. 699

May 20, 1946.

Subject: ENTITLEMENT OF TEMPORARY MEMBERS OF THE COAST GUARD RESERVE TO BENEFITS UNDER LAWS GOVERNING THE VETERANS ADMINISTRATION

QUESTION PRESENTED: Are former temporary members of the Coast Guard Reserve within the purview of the statutes providing for National Service Life Insurance, pension, or medical and hospital services, as beneficiaries of the Veterans Administration?

FACTS: The Acting Commandant of the United States Coast Guard states that temporary Reservists of the Coast Guard are divided into six classifications, as follows:

"(a) For active full-time duty with military pay and allowances.

"(b) For part-time or intermittent duty without pay and allowances other than for uniforms.

"(c) Pilots without pay and allowances other than for uniforms but paid by their own companies.

"(d) Officers of Great Lakes vessels without pay and allowances other than for uniforms but paid by their own companies.

"(e) Coast Guard police without pay and allowances.

"(f) Civil Service employees of the Coast Guard enrolled for full-time active duty without pay other than compensation of their civilian positions."

In explanation of the six classifications, the Acting Commandant says:

"(a) Very little, if any, distinction is made between this group and regular members of the Reserve of similar ranks or ratings with the exception that the former were generally limited in the performance of duty to shore stations within the continental limits of the United States and on vessels operating from continental shore bases.

"(b) This constitutes that large group of men who for patriotic reasons wished to serve a certain amount of time to relieve regular Coast Guard personnel in the protection of our ports and waterfronts and the patrol of these waterfronts. Their service was purely voluntary and their only compensation was a uniform allowance if they consistently served twelve hours a week.

"(c) Pilots throughout the country were enrolled and put in uniform in officer rank as far as possible comparable to their position of authority

as pilots. This was done for military convenience to make it possible to exercise a certain amount of military control over these men in time of war and to clothe them in some military authority.

"(d) Ore-carrying vessels going through the Soo Locks were in the minds of many a likely field for sabotage. The examination and search of vessels was a duty ordinarily devolving upon the Coast Guard but the enormity of the job and lack of personnel made it expedient to commission officers of these vessels, again as military convenience, so that they could make the examinations and enjoy the authority which the uniform would give them, as well as the military control over them which the Coast Guard would then have.

"(e) The protection of plants vital to the war effort made it necessary for the Army and Navy, whose responsibility for the protection of these plants it was, to militarize the civilian guards at these plants. The Army used the Auxiliary military police but the Navy turned to the Coast Guard for enrollment of these men as temporary members of the Reserve, the objective being the added authority by a member of the military forces and military control in emergencies. The legal status of these men was never determined to the point where they actually had the authority hoped for, and the Navy abandoned the program upon the advice of Congress, in February of 1944.

"(f) It was decided as a matter of administrative policy to enroll as temporary members of the Reserve a number of Coast Guard civilian key employees, both here at Headquarters and in its field offices. Such employees were, for the most

part, performing technical and professional services, and due to their close association with military personnel it was determined that the interests of the Service required the militarization of those employees. They continued to perform the same duties, and retained their Civil Service status and received Civil Service pay."

COMMENT: The Reserve of the Coast Guard was established by Public No. 8, 77th Congress, entitled,

> "An Act to provide for the establishment, administration, and maintenance of a Coast Guard Auxiliary and a Coast Guard Reserve."

Section 207 of that Act, as amended by Public Nos. 599, 762, and 773, 77th Congress, provides:

> "'SEC. 207. The Commandant, with the approval of the Secretary of the Treasury or of the Secretary of the Navy, while the Coast Guard is operating as a part of the Navy, is hereby authorized to enroll as temporary members of the Reserve, for duty under such conditions as he may prescribe, including but not limited to part-time and intermittent active duty with or without pay, and without regard to age, members of the Auxiliary, such officers and members of the crew of any motorboat or yacht placed at the disposal of the Coast Guard and such persons (including Government employees without pay other than the compensation of their civilian positions), who by reason of their special training and experience are deemed by the Commandant to be qualified for such duty, as are citizens of the United States or of its Territories or possessions, including

the Philippine Islands, to define their powers and duties, and to confer upon them, appropriate to their qualifications and experience, the same ranks, grades, and ratings as are provided for the personnel of the regular Coast Guard Reserve. When performing active duty with pay, as herein authorized, temporary members of the Reserve shall be entitled to receive the pay and allowances of their respective ranks, grades, or ratings, as may be authorized for members of the regular Coast Guard Reserve.' "

It is at once apparent that as to all such classes except (a) there is no question that they are not in what is ordinarily referred to as the "active military or naval service". For the purpose of benefits in the system stemming from Public No. 2, 73d Congress, including pensions, compensation, medical, hospital and domiciliary care, burial, vocational rehabilitation, loan guaranty or insurance, employment, readjustment allowances, and similar benefits, such service is defined as follows:

"II. The term 'military or naval forces' shall mean the Army, the Navy, the Marine Corps, the Coast Guard, the Naval Reserves, the National Naval Volunteers, and all other branches of the United States service while serving pursuant to law with the Army or Navy.

"III. The term 'person who served' shall mean a person, whether male or female and whether commissioned, enlisted, enrolled or drafted, who was finally accepted for active service in the military or naval forces of the

United States, members of training camps authorized by law, and such other persons heretofore recognized by statute as having a pensionable status." (Veterans Regulation No. 10.) (Amendments to paragraph III by section 10, Public No. 144, 78th Congress, and by Public No. 301, 79th Congress, not material to the issue here involved.)

For insurance purposes section 601 (c) of the National Service Life Insurance Act, provides:

"(c) The term 'active service' means active service in the land or naval forces (including the Coast Guard) of the United States and service in the land or naval forces of the United States under the Selective Training and Service Act of 1940, but the service of any person ordered to active duty in any such force for a period of thirty days or less, shall not be deemed to be active service in such force during such period;" (Amendments to section 601(c) by section 10, Public No. 144, 78th Congress, and Public No. 301, 79th Congress, not material to the issue here involved.)

As to class (a) it is clear they are in the active naval (Coast Guard) service unless, as the Congress has the power to do, they have been excepted by statute.

In connection with the question of the status of the temporary members of the Reserve under Selective Service, section 208, Public No. 8, 77th Congress, provides:

"Sec. 208. Members of the Reserve, other than temporary members as provided for in section 207 hereof, shall receive the same ex-

emption from registration and liability for training and service as members of the Naval Reserve, and no member of the Reserve, other than temporary members thereof, shall be a member of any other naval or military organization except the Auxiliary or the Coast Guard as provided for in sections 214 and 215 of this title: Provided, That temporary members of the Reserve who may be members of any other military reserve, if ordered to active duty therein, shall be forthwith released from all active duty with the Coast Guard, and their statu as temporary members of the Reserve terminated."

Examination of section 5 (a) of the Selective Training and Service Act of 1940 (Public No. 783, 76th Congress, as amended) listing those exempted from registration and liability for training and service thereunder, would seem to require the conclusion that as *all* temporary members of the Reserve were not exempt from "registration and liability for training and service", and that those who were members of any other military reserve "if ordered to active duty therein, shall be forthwith released from *all active duty* with the Coast Guard, and their status as temporary members of the Reserve terminated." (Emphasis supplied.) It was the intent of the Congress that such temporary Reserve was not to have a status identical with that of those organizations of the military establishment whose members were exempted from registration, training and service.

There having been called to attention the fact that as to group (a), it had been held by the Judge Advocate General of the Navy that temporary

members of the reserve had veteran status under the Civil Service laws, and that, in other opinions, it had been held that such force constituted a part of the forces "in active service", copies of these opinions were secured to ascertain whether the legal principles therein applied were persuasive to the view that such temporary members of the Coast Guard Reserve were within the purview of the laws governing the Veterans Administration. Examination thereof shows the following:

In an opinion dated April 11, 1944, on the eligibility of temporary members of the Coast Guard Reserve to receive mustering-out pay, under Public No. 225, 78th Congress, it was stated:

> "* * * Since temporary members of the Coast Guard Reserve are not in terms excepted from the cited statute as being ineligible to receive the benefits therein prescribed, it would appear that they are entitled to said benefits unless otherwise precluded therefrom. * * *"

The opinion then goes on to point out that approximately 70,000 persons enrolled as temporary members of the Coast Guard Reserve, for full-time, part-time or intermittent active duty, with or without pay, including Government employees without pay other than compensation for their civilian positions, being enrolled under formal contracts for the duration of the war, unless sooner terminated by the Coast Guard, in the six classifications mentioned in the letter from the Acting Commandant of the United States Coast Guard of October 26, 1945, as quoted above; that classifications (b) to (f) inclusive, do not receive military pay or allow-

ance other than uniform allowances; that such members retain civilian positions held at the time of enrollment and work at them for full pay either while performing their duties or when not performing duty. As to the groups falling within subparagraphs (b) to (f), inclusive, who serve without pay, the opinion concludes that as mustering-out pay constitutes—

> "* * * *pay*, which is additional to the *pay* to which the veteran was entitled at the tim of his discharge or relief from active service. * * *"

it cannot be paid. This opinion, which is not based on the status, duties, etc., of temporary members is of no persuasive force in the present question.

An opinion of July 15, 1944, dealt with the status of temporary members under sections 203 and 302 of Public No. 277, 78th Congress, which provided for the printing and distribution of post cards to be used as applications for ballots, registration, etc. Section 302 defined those to whom the Act applied and included members "of the armed forces" of the United States. The specific question was whether temporary members of the Coast Guard Reserve came within the specific phrase.

The opinion holds that as members of the Coast Guard Reserve, temporary, are subject to the laws and regulations for the government of the Navy, they are members of the armed forces and within the purview of Public No. 277. This opinion, likewise, is not believed to be authority as regards the question of entitlement under the laws governing the Veterans Administration, which are provided for on the basis of active service, etc.

In an opinion of the Acting Judge Advocate General of the Navy of September 16, 1944, on the question as to "veteran's status" of temporary members of the Reserve, there was cited an opinion of the United States District Court for the Eastern District of Pennsylvania (in re petition of James H. Brown, boatswain's mate, first class, U. S. Coast Guard Reserve (Temporary) for the writ of Habeas Corpus vs. John J. Cain, Warden of the Prison of Delaware County, Pennsylvania), decided in June 1944, in which the court held in part, as follows:

> " 'The relator has been since December 21, 1942 an enrolled temporary member of the Coast Guard Reserve, with the rating of Boatswain's Mate, First Class. *As such he was a member of the armed forces of the United States.*' " (Italics supplied.)

There is cited in the opinion the fact that the Veterans Administration has held that temporary members of the Reserve may not receive the benefits of National Service Life Insurance and that such reservists when killed or injured in line of duty are entitled only to the benefits prescribed by law for civilian employees of the United States. The opinion then concludes:

> "7. It would therefore appear that for certain purposes and under certain circumstances members of the Coast Guard Reserve (Temporary) are considered members of the armed forces of the United States, though in a limited status, and are not entitled to all the rights and benefits accruing to members and veterans of the armed services.

"8. In view of the foregoing, I am of the opinion that only those members of the U. S. Coast Guard Reserve (Temporary) who perform full time active duty with military pay and allowances and who by reason thereof are eligible upon separation from the service to mustering-out payments under Public Law 225—78th Congress (Mustering-Out Payment Act of 1944) should be considered as naval veterans."

The statement made by the Judge Advocate General of the Navy that the definition of the term "active service" for one purpose would not be controlling, (as a matter of fact it may not even be persuasive) on any question which would involve the interpretation of these words under any other law, is concurred in.

The term "active service" under the laws governing the Veterans Administration, has been consistently defined by the Veterans Administration as applying to those in the active military or naval service as such, and not as a quasi-military or civilian adjunct thereto.

In letter dated October 24, 1942, to the Commandant, United States Coast Guard, it was stated, in part:

"Further reference is made to your letter requesting to be advised as to the effect on the payment of veterans' benefits or retired pay of persons (1) who enroll in the Coast Guard Reserve as temporary officers or enlisted men, pursuant to Section 207 of the Coast Guard Auxiliary and Reserve Act of 1941, as such section was amended by Public Law No. 599, 77th

Congress, approved June 6, 1942, where no Coast Guard pay and allowances are involved, (2) who enroll in the Coast Guard Reserve as temporary officers or enlisted men with pay and allowances of their rank or rating, and (3) whether the situation would be different in any case under (2) if the enrollee would agree to waive the receipt of any such veterans' benefits or retired pay for the period of his Coast Guard service.

"In my letter to you of August 3, 1942, referred to in your present inquiry, it was stated, in part, that it was reasonable to conclude that the status of temporary officers and enlisted men in the Coast Guard Reserve is not that of a person in the active service in the military or naval forces (including the Coast Guard) of the United States, and that I was constrained to advise that such persons were not eligible for National Service Life Insurance. For the same reasons which influenced this decision I am of the opinion that such temporary officers and enlisted men in the Coast Guard Reserve are not in the active service of the Navy, including the Coast Guard, within the purview of the statutes and regulations which would prohibit the payment of veterans' benefits or retired pay to persons in receipt of active service pay. * * *"

In XC-3,132,330, 77 Sol. 183, there was considered on November 24, 1944, the question as to the validity of an application for National Service Life Insurance executed by the applicant when enrolled as a temporary member of the United

States Coast Guard Reserve, the application having been executed after he was placed on active duty with full pay.

The opinion called attention to advice previously given the Commandant of the United States Coast Guard, that temporary members of the Reserve do not have the status of persons in the active service in the naval forces and held—

> "* * * As the application of February 26, 1942, was made while the applicant was a member of the temporary reserve, its rejection was proper, * * *"

The status of temporary members of the Reserve of the Coast Guard, under the laws governing the Veterans Administration, parallels that of the Women's Army Auxiliary Corps under such laws. In discussing the question whether a veteran's widow would be precluded from receiving concurrently death pension (as a widow) and pay as a member of the Women's Army Auxiliary Corps because of the statutory provision that—

> "No pension shall be allowed or paid to any officer, noncommissioned officer, or private in the Army, Navy, or Marine Corps of the United States, either on the active or retired list." (38 U. S. C. 26; 26 Stat. 1082.)

in XC-2,969,369, 63 Sol. 598, [Administrator's Decision No. 502] it was stated:

> "* * * Without commitment as to whether any statute, or other law, would preclude payment of pension to a widow in the active military service, the instant case may be

disposed of by determination that the enrollment of the veteran's widow as a private in the Women's Army Auxiliary Corps does not constitute active military service. The status of members of the Women's Army Auxiliary Corps is similar in some respects to officers and enlisted men of the Army. Section 13 of Public No. 554, 77th Congress, approved May 14, 1942, creating the Women's Army Auxiliary Corps, provides that the Corps shall be administered by the Secretary of War through the channels of command of the Army pursuant to such regulations as the Secretary may promulgate and that the Secretary is authorized to prepare and issue any and all regulations, rules or orders and to employ any and all of the facilities of the War Department and of the Army of the United States to carry into effect the provisions of that Act.

* * * * *

"Moreover, the provisions of Sections 11 and 12 of the Act show that it was not the intent of Congress to incorporate the Women's Army Auxiliary Corps into the Army of the United States but that it was intended that the Corps should serve as an auxiliary with the Army. Section 11 provides, in part, in case of the injury or death of any member of the Corps incurred in active service in the Corps, for the payment to the member or her beneficiary of all benefits prescribed by law for 'civilian employees' of the United States who are physically injured while in performance of duty or who die as a result thereof. This

> section also provides that the United States Employees' Compensation Commission shall have jurisdiction in such cases and shall perform the same duties with reference thereto as in the cases of 'other civilian employees of the United States' so injured or otherwise incapacitated. It is further stated in the same section that employees' compensation under that Act shall not be paid concurrently with active duty pay or pension based upon active service. * * *"

It was thereupon concluded that service in the Women's Army Auxiliary Corps was not "active service" within the meaning of the 1891 Act, supra, and therefore that the widow, not being in receipt of active service pay, was not precluded from receiving, concurrently, both pension as a widow and pay as a member of the Women's Army Auxiliary Corps.

Another opinion dated November 28, 1944, approved November 29, 1944, held that service in the Women's Army Auxiliary Corps was not active service within the contemplation of Public No. 346, 78th Congress.

As to temporary members of the Coast Guard Reserve, section 211, Public No. 8, 77th Congress, provides:

> "Members of the Reserve, other than temporary members thereof, who suffer sickness, disease, disability, or death in line of duty shall be entitled to the same benefits as are or may hereafter be prescribed by law for members of the Naval Reserve who suffer sick-

ness, disease, disability, or death under similar conditions."

Section 212 of the same Act, provides:

"When any temporary member of the Reserve is physically injured in line of duty while performing active Coast Guard service, or dies as a result of such physical injury, he or his beneficiary shall be entitled to all the benefits prescribed by law for civil employees of the United States, and the United States Employees' Compensation Commission shall have jurisdiction in such cases and shall perform the same duties with reference thereto as in the case of civil employees of the United States. Temporary members of the Reserve who contract sickness or disease while performing active duty shall be entitled to the same hospital treatment as is afforded members of the regular Coast Guard."

Section 212 (a), (added by Public No. 447, 78th Congress), provides:

"'Sec. 212. (a) In case of physical injury or death resulting from physical injury—

"'(1) to any temporary member of the Reserve when incurred after February 19, 1941, in line of duty as a member of the Reserve, while on active duty or engaged in authorized travel to or from such duty; or

"'(2) to any member of the Auxiliary not on active duty as a member of the military or naval forces, when incurred after February

19, 1941, while on Coast Guard patrol pursuant to the request of competent Coast Guard authority, and which would have been incurred in line of duty in the active service had he been a member of the Reserve acting under competent orders; the provisions of the Act entitled "An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes", approved September 7, 1916 (5 U. S. C., ch. 15), as amended, subject to the other subsections of this section, shall apply, and such Act shall be administered by the United States Employees' Compensation Commission (hereinafter called the Commission) in the same manner and to the same extent as if such person were a civil employee of the United States and were injured while in the performance of his duty: Provided, That for benefit computation, regardless of pay or pay status, such person shall be deemed to have had monthly pay of $150.' ".

In Report No. 1093, (Senate 78th Congress, 2nd Session) accompanying H. R. 3704, the Bill enacted as Public No. 447, 78th Congress, it was stated apropos benefits under the Bill that:

"It will be noted from the foregoing schedule of benefits that these, in general, would conform to the benefits provided under laws administered by the Veterans' Administration and, like those laws, would be afforded without regard to the pay status or rank of the individual concerned."

A number of Bills have been introduced in the present Congress for the express purpose of granting a status to temporary members of the Reserve under the laws governing the Veterans Administration. A report to the Director, Bureau of the Budget, on one of these, S. 1465—

"'A Bill Extending certain recognition and rights to temporary members of the United States Coast Guard Reserve, including the Voluntary Port Security Force, and members of the Coast Guard Auxiliary' ", on November 30, 1945, reads in part:

> "The purpose of the bill is to grant disability and death compensation, pensions, allowances, and other benefits to temporary members of the Coast Guard Reserve and members of the Coast Guard Auxiliary who suffer physical injury or death resulting from physical injury incurred after February 19, 1941, in the performance of certain duties for which the benefits provided by the United States Employees' Compensation Act of September 7, 1916, as amended, are now provided, by considering the injury thus sustained as having been incurred by any such member in line of duty as a member of the Regular Coast Guard. The bill further provides for the furnishing of a certificate of honorable service or an honorable discharge under certain conditions and extension of the benefits of the Veterans' Preference Act of 1944 to persons who have performed certain services and received a certificate in evidence thereof.

* * * * *

"Under Section 211, Act of February 19, 1941, members of the Reserve *other than temporary members thereof* who suffer sickness, disease, disability or death in line of duty are entitled to the same benefits as those now or hereafter prescribed by law for members of the Naval Reserve under Public Law 775, 76th Congress, August 27, 1940, as amended (34 U. S. C. 855 c-1-2) who suffer sickness, disease, disability or death under similar circumstances. Temporary members of the Reserve, on the other hand, are not entitled to such benefits, but are eligible, in case of physical injury or death resulting from physical injury incurred after February 19, 1941 in line of duty as a member of the Reserve while on active duty or engaged in authorized travel to or from such duty to the benefits provided civilian employees of the United States under the United States Employees' Compensation Act, as amended; and for benefit computation, regardless of pay or pay status are deemed to have had monthly pay of $150.

"It has long been the policy of the Congress to restrict veterans' benefits, as such, to persons who served in active military or naval service, and it is the view of the Veterans' Administration that the basic requirement of active military or naval service as a prerequisite to entitlement to such benefits under laws administered by the Veterans' Administration is fundamentally sound. Service such as that rendered by temporary members of the Coast Guard Reserve and members of the Coast Guard Auxiliary is recognized as essentially

civilian service and provision is made for such members through extension to them of the benefits provided for civilian employees of the United States and certain civilian groups subjected to war hazards, under the United States Employees' Compensation Act, as amended."

As already shown above, it has been the consistent view of the Veterans Administration that where the organic Act restricts the potential right of a beneficiary thereunder to benefits "prescribed by law for civil employees of the United States" as does section 212, Public No. 8, 77th Congress, as amended, any person whose rights are governed by such Act is not entitled to pension benefits under the laws governing the Veterans Administration in the absence of specific legislation extending benefits to them. This was one of the premises resulting in the conclusion that the Women's Army Auxiliary Corps was not within the purview of any of such laws until Public No. 10, 78th Congress, specifically extended hospitalization, domiciliary care and burial benefits to such Corps.

It is also to be noted that in 77 Sol. 183, the words "active service" as used in section 601 (c) of the National Service Life Insurance Act were defined as not including a temporary member of the Coast Guard Reserve, even though on active full-time duty with pay. (Group (a).)

HELD: Temporary members of the Coast Guard Reserve are not within the purview of the laws governing the Veterans Administration for pension, National Service Life Insurance or medical and hospital services as beneficiaries of the Veter-

ans Administration. (Opinion of the Solicitor, Veterans Administration, dated March 15, 1946.)

This decision is hereby promulgated for observance by all officers and employees of the Veterans Administration.

(S.) OMAR N. BRADLEY,
General, U. S. Army,
Administrator of Veterans Affairs.

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